

1                                   BEFORE THE  
2                                   ILLINOIS COMMERCE COMMISSION  
3                   IN THE MATTER OF:                                   )  
4                   ILLINOIS COMMERCE COMMISSION                                   )  
5                   On Its Own Motion                                   ) 02-0689  
6                   Amendment of 83 Ill. Adm. Code 758.                                   )  
7                                   Chicago, Illinois  
8                                   August 13, 2003  
9                   Met, pursuant to notice.  
10                  BEFORE:  
11                  Ms. Leslie Haynes, Administrative Law Judge.  
12                  APPEARANCES:  
13                  MR. DOUGLASS A. DOUGHERTY  
14                  300 East Monroe Street  
15                  Suite 306  
16                  Springfield, Illinois 62701  
17                  for Illinois Telecommunications  
18                  Association;  
19                  (telephonically)  
20                  MS. SARAH NAUMER  
21                  8000 Sears Tower  
22                  Chicago, Illinois 60606  
                  for Verizon North, Inc., and  
                  Verizon South, Inc.;  
                  (telephonically)

1 APPEARANCES:

2 MR. MICHAEL WARD  
3 1608 Barkley Boulevard  
4 Buffalo Grove, Illinois 60089  
5 for Illinois Public  
6 Telecommunications Association;  
7 (telephonically)

8 MR. SEAN R. BRADY and  
9 MS. BRANDY D.B. BROWN  
10 160 North LaSalle Street  
11 Suite C-800  
12 Chicago, Illinois 60601  
13 for staff ICC.

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16 SULLIVAN REPORTING COMPANY, by  
17 FRANCISCO E. CASTANEDA, CSR,  
18 License No. 084-004235

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I N D E X

Re- Re- By  
Witnesses: Direct Cross direct cross Examiner  
NONE.

E X H I B I T S  
APPLICANT'S For Identification In Evidence  
NONE.

1 JUDGE HAYNES: Pursuant to the direction of  
2 the Illinois Commerce Commission, I now call  
3 Docket 02-0689, Illinois Commerce Commission on  
4 its own motion.

5 May I have the appearances for the  
6 record, please.

7 MR. BRADY: You want to start up here?

8 JUDGE HAYNES: We'll start in the hearing  
9 room.

10 MR. BRADY: Appearing on behalf of staff of  
11 the Illinois Commerce Commission, Sean R. Brady  
12 and Brandy D.B. Brown, 160 North LaSalle Street,  
13 Suite C-800, Chicago, Illinois 60601.

14 JUDGE HAYNES: And on the telephone.

15 MR. DOUGHERTY: On behalf of the Illinois  
16 Telecommunications Association, Douglass A.  
17 Dougherty, D-o-u-g-h-e-r-t-y, 300 East Monroe  
18 Street, Suite 306, Springfield, Illinois 62701.

19 MS. NAUMER: On behalf of Verizon North, Inc.,  
20 and Verizon South, Inc., Sarah Naumer,  
21 N-a-u-m-e-r, the law firm of Sonnenschein, Nath &  
22 Rosenthal, 8000 Sears Tower, Chicago, Illinois

1       60606.

2           MR. WARD:   On behalf of the Illinois Public  
3   Telecommunications Association, Michael Ward,  
4   1608 Barkley Boulevard, Buffalo Grove, Illinois  
5   60089.

6           JUDGE HAYNES:   Are there any further  
7   appearances?

8                       Let the record reflect there are none.

9                       Would someone like to summarize what's  
10   been going on since the last time we had a  
11   status?

12          MR. BRADY:   Probably Mr. Dougherty would be  
13   the best since he's been in touch with the  
14   legislation.

15          MR. DOUGHERTY:   Yeah.   Sure.   I think I  
16   circulated a memorandum to -- a copy of a  
17   memorandum I wrote to Judge Haynes just letting  
18   the judge and the parties know that the governor  
19   did, in fact, sign the senate bill.

20                       And I think that the language in that  
21   statute, which is now a public act, sort of  
22   mitigates the need for this proceeding to

1       continue.

2               The language clearly states that there  
3       are six exemptions to Admin. Code Part 758, which  
4       would require the solicitation and remittance of  
5       funds to the Digital Divide Elimination Fund.

6               So because of that statutory language,  
7       we think -- at least my belief is that -- the ITA  
8       believes that the current rule is appropriate and  
9       it need not be amended.

10              So since this docket was open on a  
11       motion by the Illinois Commerce Commission, as my  
12       memorandum stated, I would respectfully request  
13       that the Commission enter a motion to dismiss the  
14       proceeding.

15              JUDGE HAYNES:   Does staff have a response to  
16       that?

17              MR. BRADY:   Yeah.   We have taken a look at the  
18       legislation; and at this time, we don't see a  
19       need to continue forward with the language -- the  
20       changes that we had proposed originally.

21              So we have no problem.   I guess we  
22       intend to file a motion to dismiss for the next

1 day or so, and also a request of the Commission  
2 to file with the Secretary State of Illinois a  
3 notice of withdrawal of this rulemaking pursuant  
4 to the APA. Since we have already gone through  
5 first notice.

6 MR. DOUGHERTY: And this is Dougherty. The  
7 ITA agrees wholeheartedly with staff's  
8 recommendation on how to proceed in this case.

9 JUDGE HAYNES: Will this be a joint motion  
10 perhaps of all the parties?

11 MR. BRADY: We had not intended it as such.  
12 We had proceeded on our own at this time.

13 JUDGE HAYNES: I'm just procedurally wondering  
14 if everyone doesn't sign off on it, would a  
15 proposed order need to go out or does staff  
16 intend for this to be a docket entry or would  
17 a -- by the Commission, or would an order need to  
18 be entered?

19 MR. BRADY: We don't see the need for  
20 necessarily an order to be entered. I think the  
21 initiating order put us at first notice, and I  
22 think the key action that needs to be taken is,

1       since we've already sent the Secretary of State  
2       notice of this, is that we would need to send  
3       them a notice of withdrawal since they've already  
4       been notified.

5           JUDGE HAYNES:   Okay.   So I will look for  
6       staff's motion; and if it's not a joint motion,  
7       other parties should file something indicating  
8       that they agree or if they don't intend to  
9       object, just so I'll know who's on board with the  
10      motion.

11             And I'm not sure if an order is  
12      necessary or not but --

13           MR. BRADY:   That might -- on one hand it might  
14      be necessary since we already have an initiating  
15      order that had found that these changes were  
16      needed just as...

17           JUDGE HAYNES:   So, procedurally, would I mark  
18      it heard and taken today?   I think I would.

19           MR. BRADY:   Yes.   I mean, I don't see us  
20      bringing any evidence at this point.   We're just  
21      going to be filing a motion to dismiss and the  
22      request.



1 JUDGE HAYNES: Does anybody else want to add  
2 anything?

3 MS. NAUMER: Your Honor, what time frame would  
4 you like our responses for staff session to be  
5 filed, the normal period or would you like them  
6 earlier?

7 JUDGE HAYNES: Are we under some time pressure  
8 because we filed first notice?

9 MR. BRADY: Well, the first notice was  
10 published on November 15th by Illinois Register.  
11 And according to the APA, we have one year to  
12 complete both first notice and second notice by  
13 that date.

14 So that would be the only constraint.  
15 And that being three months away, I don't see it  
16 as being much of a constraint. But that will be  
17 the only thing.

18 JUDGE HAYNES: Well, just leave it with the  
19 two months and one month.

20 MR. BRADY: Two weeks and one week?

21 JUDGE HAYNES: And two weeks and one week.  
22 And if nobody disagrees, there won't even be the

1       reply period.

2                   Anything else?

3                   Hearing nothing --

4       MR. DOUGHERTY:  No, your Honor.

5       JUDGE HAYNES:  Okay.  I will mark this record

6       heard and taken.  Thank you.

7                   HEARD AND TAKEN

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